

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EM LTD. and NML CAPITAL, LTD.,	:	
	:	
Plaintiffs,	:	06 Civ. 7792 (TPG)
	:	
- against -	:	
	:	
BANCO CENTRAL DE LA REPÚBLICA ARGENTINA	:	
and THE REPUBLIC OF ARGENTINA,	:	
	:	
Defendants.	:	
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(Additional cases listed in Annex 1)

**THE REPUBLIC OF ARGENTINA'S JOINDER IN BANCO CENTRAL DE LA
REPÚBLICA ARGENTINA'S MARCH 26, 2010 SUBMISSIONS AND
MEMORANDUM OF LAW IN FURTHER OPPOSITION TO PLAINTIFFS' MOTION
TO CONFIRM EX PARTE ATTACHMENT ORDERS**

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Banco Central de la República Argentina (“BCRA”) today served, in the actions listed in Annex 1, its Cross-Motion to Vacate All Ex Parte Orders, and its Memorandum of Law (1) in Opposition to Plaintiffs’ Motions to Confirm Attachment Orders and (2) in Support of Cross-Motion to Vacate All Ex Parte Orders (respectively, “BCRA’s Cross-Motion to Vacate” and “BCRA’s Memorandum”). The Republic of Argentina (the “Republic” or “Argentina”) hereby joins in BCRA’s Cross-Motion to Vacate and BCRA’s Memorandum for the reasons set forth therein and in the previous papers submitted by BCRA and the Republic in these actions, as well as for the reasons set forth below.

ARGUMENT

The Republic supports BCRA’s Cross-Motion to Vacate and opposes plaintiffs’ motions to confirm the ex parte attachment orders for the additional reasons that (1) the Duane Morris plaintiffs’ attachment orders were procedurally improper in their post-judgment cases, and (2) certain of the Duane Morris and Milberg plaintiffs impermissibly seek relief against the Republic and BCRA for judgments entered solely against the Province of Buenos Aires.

First, in addition to all of the reasons set forth in BCRA’s Memorandum, the Duane Morris ex parte attachment orders, *see* Annex 2, must be vacated because they are procedurally improper. Under New York law, an article 62 attachment proceeding is available only to pre-judgment plaintiffs, whereas judgment has been entered in all of the Duane Morris actions. See N.Y. C.P.L.R. § 6211 (“An order of attachment may be granted without notice . . . at any time prior to judgment.”) (emphasis added); Koehler v. Bank of Bermuda Ltd., 911 N.E.2d 825, 828, 12 N.Y.3d 533, 537 (N.Y. 2009) (“CPLR article 52 governs the enforcement of money judgments By contrast, prejudgment attachment is governed by CPLR article 62.”).

Second, the ex parte restraining notices, attachment orders and writs of execution obtained by the Duane Morris and Milberg plaintiffs must also be vacated to the extent that they seek relief against the Republic and BCRA for judgments obtained solely against the Province of Buenos Aires. *See* Annex 3. The Province of Buenos Aires is a political subdivision and separate entity from the Republic under the Argentine federal constitutional system, just as the State of New York is separate from the United States of America; in neither case is the federal government liable for the state's obligations. Under the FSIA, it is well established that even wholly owned agencies or instrumentalities of a state are presumptively separate from the state itself. *See First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 625-28 (1983); *Letelier v. Republic of Chile*, 748 F.2d 790, 795 (2d Cir. 1984). *A fortiori*, there is no basis under the FSIA or otherwise for conflating a federal government, like that of Argentina, Canada or the United States, with its individual provinces or states. *See also* 28 U.S.C. § 1603(b)(2) (defining "agency or instrumentality" to also include a separate political subdivision of a foreign state).

The Duane Morris and Milberg plaintiffs who hold judgments solely against the Province thus have no right to attach or restrain property of the Republic, or property of BCRA alleged to be that of the Republic. These plaintiffs failed, however, to make any reference to their lack of a judgment against the Republic in their applications for ex parte orders before the Court, and have submitted no argument – because there is none – that either the Republic or BCRA could be held liable for judgments against the Province. Accordingly, they are not entitled to ex parte orders "against Argentina," *see, e.g.*, Duane Morris Attachment Order, dated Feb. 4, 2010, at 6; Milberg Restraining Notice, dated Jan. 15, 2010, at 13-15, that would erase

the distinction established under the law between the Province and the federal government of Argentina.

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For the foregoing reasons, the Republic requests that BCRA's motion to vacate be granted, and plaintiffs' motions to confirm be denied.

Dated: March 26, 2010
New York, New York

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ANNEX 1

1. Applestein TTEE FBO D.C.A. Grantor Trust v. Province of Buenos Aires, 02 Civ. 1773 (TPG)
2. Lightwater Corp. v. Republic of Argentina, 02 Civ. 3804 (TPG)
3. Old Castle Holdings, Ltd. v. Republic of Argentina, 02 Civ. 3808 (TPG)
4. Applestein TTEE FBO D.C.A. Grantor Trust, et al. v. Republic of Argentina, 02 Civ. 4124 (TPG)
5. Etevob, et al. v. Republic of Argentina & Province of Buenos Aires, 03 Civ. 1680 (TPG)
6. EM Ltd. v. Republic of Argentina, 03 Civ. 2507 (TPG)
7. Franceschi, et al. v. Republic of Argentina, 03 Civ. 4693 (TPG)
8. Applestein TTEE FBO D.C.A. Grantor Trust v. Province of Buenos Aires, 03 Civ. 6268 (TPG)
9. Mazzini, et al. v. Republic of Argentina, 03 Civ. 8120 (TPG)
10. NML Capital, Ltd. v. Republic of Argentina, 03 Civ. 8845 (TPG)
11. Denchu Invest. Corp. v. Republic of Argentina, 03 Civ. 9538 (TPG)
12. Morata, et al. v. Republic of Argentina, 04 Civ. 3314 (TPG)
13. Moldes, et al. v. Republic of Argentina & Province of Buenos Aires, 04 Civ. 6137 (TPG)
14. Cilli, et al. v. Republic of Argentina, 04 Civ. 6594 (TPG)
15. Rosa, et al. v. Republic of Argentina, 04 Civ. 7504 (TPG)
16. Consolini, et al. v. Republic of Argentina, 05 Civ. 177 (TPG)
17. Legnaro, et al. v. Republic of Argentina & Province of Buenos Aires, 05 Civ. 178 (TPG)
18. NML Capital, Ltd. v. Republic of Argentina, 05 Civ. 2434 (TPG)
19. Ferri, et al. v. Republic of Argentina, 05 Civ. 2943 (TPG)
20. Rigueiro, et al. v. Republic of Argentina, 05 Civ. 3089 (TPG)
21. Sauco, et al. v. Republic of Argentina, 05 Civ. 3955 (TPG)
22. Capital Ventures Int'l v. Republic of Argentina, 05 Civ. 4085 (TPG)
23. Bettoni, et al. v. Republic of Argentina, 05 Civ. 4299 (TPG)
24. Fedecostante, et al. v. Republic of Argentina, 05 Civ. 4466 (TPG)
25. Meridian Invest. & Bus. Corp. v. Republic of Argentina, 05 Civ. 5197 (TPG)
26. Lisi, et al. v. Republic of Argentina, 05 Civ. 6002 (TPG)
27. Rossini, et al. v. Republic of Argentina & Province of Buenos Aires, 05 Civ. 6200 (TPG)
28. Klein, et al. v. Republic of Argentina, 05 Civ. 6599 (TPG)
29. Lovati v. Republic of Argentina, 05 Civ. 8195 (TPG)
30. Botti, et al. v. Republic of Argentina, 05 Civ. 8687 (TPG)
31. Pasquali, et al. v. Republic of Argentina, 05 Civ. 10636 (TPG)
32. Capital Ventures Int'l v. Republic of Argentina, 06 Civ. 207 (TPG)
33. Bolland, et al. v. Republic of Argentina, 06 Civ. 3196 (TPG)
34. Amoroso v. Republic of Argentina, 06 Civ. 3197 (TPG)
35. Bliway Int'l S.A. v. Republic of Argentina, 06 Civ. 3198 (TPG)
36. Schwald, et al. v. Republic of Argentina, 06 Civ. 6032 (TPG)
37. NML Capital, Ltd. v. Republic of Argentina, 06 Civ. 6466 (TPG)
38. Ivelo Holding Corp. v. Republic of Argentina, 06 Civ. 7100 (TPG)
39. EM Ltd. & NML Capital, Ltd. v. Banco Central de la República Argentina & Republic of Argentina, 06 Civ. 7792 (TPG)
40. Beyer, et al. v. Republic of Argentina, 07 Civ. 98 (TPG)

41. Palladini, et al. v. Republic of Argentina, 07 Civ. 689 (TPG)
42. Catto, et al. v. Republic of Argentina, 07 Civ. 937 (TPG)
43. NML Capital, Ltd. v. Republic of Argentina, 07 Civ. 1910 (TPG)
44. NML Capital, Ltd. v. Republic of Argentina, 07 Civ. 2690 (TPG)
45. Blue Angel Capital I LLC v. Republic of Argentina, 07 Civ. 2693 (TPG)
46. Aurelius Capital Partners, LP, et al. v. Republic of Argentina, 07 Civ. 2715 (TPG)
47. Borgra, et al. v. Republic of Argentina, 07 Civ. 5807 (TPG)
48. NML Capital, Ltd. v. Republic of Argentina, 07 Civ. 6563 (TPG)
49. Milanesi, et al. v. Republic of Argentina, 07 Civ. 7248 (TPG)
50. Heeb, et al. v. Republic of Argentina, 07 Civ. 10656 (TPG)
51. HWB Victoria Strategies Portfolio, et al. v. Republic of Argentina, 07 Civ. 10657 (TPG)
52. Aurelius Capital Partners, LP, et al. v. Republic of Argentina, 07 Civ. 11327 (TPG)
53. HWB Victoria Strategies Portfolio, et al. v. Republic of Argentina, 07 Civ. 11382 (TPG)
54. Erb, et al. v. Republic of Argentina, 07 Civ. 11495 (TPG)
55. U.V.A. Vaduz, et al. v. Republic of Argentina, 07 Civ. 11497 (TPG)
56. Amber Reed Corp., et al. v. Republic Argentina, 08 Civ. 440 (TPG)
57. NML Capital, Ltd. v. Republic of Argentina, 08 Civ. 2541 (TPG)
58. NML Capital, Ltd. v. Republic of Argentina, 08 Civ. 3302 (TPG)
59. Etcheto, et al. v. Republic of Argentina, 08 Civ. 4902 (TPG)
60. Hagemann, et al. v. Republic of Argentina, 08 Civ. 5436 (TPG)
61. Brandes, et al. v. Republic of Argentina, 08 Civ. 6625 (TPG)
62. NML Capital, Ltd. v. Republic of Argentina, 08 Civ. 6978 (TPG)
63. NML Capital, Ltd. v. Republic of Argentina, 09 Civ. 1707 (TPG)
64. NML Capital, Ltd. v. Republic of Argentina, 09 Civ. 1708 (TPG)
65. Carabajal, et al. v. Republic of Argentina, 09 Civ. 8275 (TPG)
66. Drawrah, et al. v. Republic of Argentina, 09 Civ. 8299 (TPG)
67. Aurelius Capital Master, Ltd., et al. v. Republic of Argentina, 09 Civ. 8757 (TPG)
68. Aurelius Capital Master, Ltd., et al. v. Republic of Argentina, 09 Civ. 10620 (TPG)

ANNEX 2

Duane Morris Plaintiffs' Post-Judgment Actions

1. Applestein TTEE FBO D.C.A. Grantor Trust v. Province of Buenos Aires, 02 Civ. 1773 (TPG)
2. Applestein TTEE FBO D.C.A. Grantor Trust, et al. v. Republic of Argentina, 02 Civ. 4124 (TPG)
3. Franceschi, et al. v. Republic of Argentina, 03 Civ. 4693 (TPG)
4. Applestein TTEE FBO D.C.A. Grantor Trust v. Province of Buenos Aires, 03 Civ. 6268 (TPG)
5. Mazzini, et al. v. Republic of Argentina, 03 Civ. 8120 (TPG)
6. Morata, et al. v. Republic of Argentina, 04 Civ. 3314 (TPG)
7. Moldes, et al. v. Republic of Argentina & Province of Buenos Aires, 04 Civ. 6137 (TPG)
8. Cilli, et al. v. Republic of Argentina, 04 Civ. 6594 (TPG)
9. Rosa, et al. v. Republic of Argentina, 04 Civ. 7504 (TPG)
10. Consolini, et al. v. Republic of Argentina, 05 Civ. 177 (TPG)
11. Ferri, et al. v. Republic of Argentina, 05 Civ. 2943 (TPG)
12. Rigueiro, et al. v. Republic of Argentina, 05 Civ. 3089 (TPG)
13. Bettoni, et al. v. Republic of Argentina, 05 Civ. 4299 (TPG)
14. Fedecostante, et al. v. Republic of Argentina, 05 Civ. 4466 (TPG)
15. Lisi, et al. v. Republic of Argentina, 05 Civ. 6002 (TPG)
16. Rossini, et al. v. Republic of Argentina & Province of Buenos Aires, 05 Civ. 6200 (TPG)
17. Klein, et al. v. Republic of Argentina, 05 Civ. 6599 (TPG)
18. Lovati v. Republic of Argentina, 05 Civ. 8195 (TPG)
19. Botti, et al. v. Republic of Argentina, 05 Civ. 8687 (TPG)
20. Pasquali, et al. v. Republic of Argentina, 05 Civ. 10636 (TPG)
21. Beyer, et al. v. Republic of Argentina, 07 Civ. 98 (TPG)
22. Borga, et al. v. Republic of Argentina, 07 Civ. 5807 (TPG)

ANNEX 3

Actions in Which Certain Plaintiffs Hold Judgments Solely Against the Province of Buenos Aires

1. Applestein TTEE FBO D.C.A. Grantor Trust v. Province of Buenos Aires, 02 Civ. 1773 (TPG)
2. Etevob, et al. v. Republic of Argentina & Province of Buenos Aires, 03 Civ. 1680 (TPG)
3. Applestein TTEE FBO D.C.A. Grantor Trust v. Province of Buenos Aires, 03 Civ. 6268 (TPG)
4. Moldes, et al. v. Republic of Argentina & Province of Buenos Aires, 04 Civ. 6137 (TPG)
5. Legnaro, et al. v. Republic of Argentina & Province of Buenos Aires, 05 Civ. 178 (TPG)
6. Rossini, et al. v. Republic of Argentina & Province of Buenos Aires, 05 Civ. 6200 (TPG)
7. Botti, et al. v. Republic of Argentina, 05 Civ. 8687 (TPG)